IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.08.2007

CORAM:

THE HON'BLE MR.JUSTICE M.CHOCKALINGAM

C.R.P.NPD.NO. 2664 OF 2004
and
C.M.P.NO.20415 of 2004

S.Padmanabhan ... Petitioner .

Vs.

1.Ramayammal
2.Amaravathi Gounder ... Respondents

This Civil Revision petition is filed under Section 115 of the Code of Civil Procedure against the fair and final order passed in Tr.O.P.No.64 of 2004 dated 13.9.2004 on the file of the Principal District Judge, Erode District at Erode.

For petitioner: Mr.S.K.Nachimuthu
For Respondents:Mr.M.M.Sundaresh

O R D E R

Challenging the order of the dismissal of Transfer OP.64 of 2004 by the Principal District Judge, Erode, the above Civil Revision Petition has been filed.

2. The Court heard the learned counsel on either side.

3. The revision petitioner filed transfer O.P. seeking to withdraw the suit in O.S.No.830 of 2004 pending on the file of Principal District Munsif Court, Erode and transfer the same to the file of Principal Subordinate Judge, Erode to be tried jointly or simultaneously along with O.S.No.765 of 2002 pending on his file. According to the petitioner, the first respondent filed a suit for recovery of money and the same is pending in O.S.No.765 of 2002 on the file of Principal Sub Court, Erode. The second respondent already filed another suit in O.S.No.767 of 2002 against the petitioner which was pending on the file of Principal Sub Court, Erode and subsequently the suit in O.S.No.767 of 2002 was transferred to the file of Principal District Munsif, Erode and re-numbered as O.S.No.830 of 2004. Both the suits have got to be tried jointly or simultaneously, since both the suits were filed by husband and wife against the petitioner herein on the strength of promissory notes alleged to have been executed by the petitioner which according to the petitioner were not supported by consideration and the attesting witnesses in both the promissory

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notes were henchman of the plaintiffs. Under such circumstances, both the suits have got to be necessarily tried either jointly or simultaneously , according to the petitioner's counsel.

4. Heard the learned counsel for the respondent on the above contentions.

5. According to the learned counsel for the respondent, both the plaintiffs are different, the considerations are different and causes of action are different and merely because the defendant happened to be the same, both the suits need not be tried jointly by the same court. Hence, the order of the lower court has got to be sustained.

6. After careful consideration of the rival submissions made, this Court is of the considered opinion that it is a fit case where both the suits have got to be tried by the same Court either jointly or simultaneously. In the instant case, two suits were filed viz., one by the husband and the other by wife. Originally, the suit was filed in O.S.No.765 of 2002 which is now pending on the file of Principal Sub Court, Erode. Equally, the second respondent already filed O.S.No.767 of 2002 which was originally pending on the same Court viz., Principal Sub Court, Erode. But subsequently, it was transferred to the District Munsif Court, Erode and now it is numbered as O.S.No.830 of 2004. The defendant who is common in both the suits has taken a defence plea that both the promissory notes which were filed in both the suits were not supported by any consideration, that the scribe and attesting witnesses are henchmen of the plaintiffs. Under such circumstances, for better appreciation of evidence and to arrive at a correct decision, both the suits have got to be tried either jointly or simultaneously, but the lower court had not adverted to the aspect of the matter, but dismissed the application which in the opinion of this Court has got to be done by upsetting the order. Under such circumstances, O.S.No.830 of 2004 pending on the file of Principal District Munsif, Erode is ordered to be transferred to Sub Court, Erode to be tried jointly or simultaneously with O.S.No.765 of 2002 and the lower court is directed to dispose of the matter within a period of three months from the date of receipt of a copy of this order.

7. The Civil Revision petition is disposed of. No costs. Consequently, CM.P.NO.20415 of 2004 is closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

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To

1.The Principal District Munsif,
Erode District at Erode.

2.The Principal Sub Court, Erode.

1 cc to Mr.S.K. Nachimuthu, Advocate, Sr. 49876
1 cc to Mr.M.M. Sundaresh, Advocate, Sr. 49413

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CMP.NO.20415 OF 2004

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